IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.378 OF 2000

1. Shri S.D.Muley ..
2. Shri B.S.Bodke ..
3. Shri D.M.Shingare ..
4. Shri B.D.Kshirsagar ..
5. Shri P.M.Jadhav ..
6. Shri R.H.Phanse ..
7. Shri Ramwadh Yadav ..
8. Shri J.G.Kalekhe ..
9. Shri Rammurat Yadav ..
10. Shri M.B.Ovhal ..
11. Shri H.B.Bodke ..
12. Shri K.S.Bodke ..
13. Shri Ramand Balwar ..
14. Shri N.R.Raut ..
15. Shri S.K.Lokhande (deceased) ..
Through his widow wife and
legal heir Kusum Sadhu Lokhande ..
16. Shri S.N.Hingane ..
17. Shri K.L.Salunke ..
18. Shri N.P.Shelke ..
19. Shri Ompal Balmiki ..
20. Shri S.B.Karale ..
21. Shri B.V.Pardeshi ..
22. Shri E.S.Mathathe ..
23. Shri A.G.Ghag ..
24. Shri R.M.Khambe ..
All R/o. C/o. S.D.Mule
House No.1000 At & Post
Rupeenagar, Talavade,
Tal. Haveli, Dist. Pune .. Appellants.

Versus

1. Jaihind Industries Ltd.
Akurde, Pune-35, ..
2. Mr.Abhay N.Firodia
Chairman Jaihind Industries
Ltd. Akurdi, Pune-35 ..
3. Mr.M.S.Bhogal
General Manager (Works)
Joint General Manager,
Jaihind Industries Ltd.
Akurdi, Pune-35 ..
4. Mr.Arvind Goyal
Joint General Manager,

Jaihind Industries Ltd.
Akurdi, Pune-35 ..
5.Member Industrial Court,
Pune .. Respondents.

Mrs.Neeta Karnik for the appellants.
Mr.S.K.Talsania i/b M/s.Sanjay Udeshi for
respondent nos.1 to 4.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.
DATE : MARCH 3, 2005.

ORAL JUDGMENT (PER S.B.MHASE, J.)

1. Heard.

2. This letters patent appeal is directed against the judgment of the Single Judge of this Court dated 28th September, 1999 in Writ Petition No.5258 of 1999 wherein the single judge after giving reasons rejected the petition is limine. The dispute involved in the present matter is in respect of implementation of the settlement under section 2(p) read with section 18(1) of the Industrial Disputes Act, 1947 and Rule 62 of Industrial Disputes (Bombay) Rules, 1957 dated 14.8.1993. The said settlement was accepted between the employer Jaya Hind Industries Ltd. and its workmen represented by Sarva Shramik Sanghatana, trade union. Even though the settlement is signed on 14.8.1993 it has been brought into force from 1st August, 1993 and the

period of said settlement was for three years and five months from the effective date and, therefore, the settlement was to remain into force from 1.8.1993 to 31.12.1996. This settlement has been partially implemented after 1.7.1994. However, the main dispute centres around clause no.3.6 and clause no.4. Clause no.3.6 is in respect of leave travel concession and clause no.4 is payment of lumpsum amount. It is to be noted that leave travel concession, as per clause 3.6, from 1.7.1994 onwards have been already paid to the appellants. However, they are claiming the benefits of the said clause for prior period. So far as clause 4 is concerned, it is provided that the workmen who are permanent, daily workmen and/or monthly rated workmen and who are on roll of the company on 1.1.1990 and who continue on rolls till the date of signing this settlement and who accepts this settlement shall be paid a lumpsum amount of Rs.8,000.00 as detailed under. We need not go into details of the settlement. The said clause also provides the schedule for the payment. According to the schedule 50% of lumpsum amount will be paid before 31st August, 1993, 25% lumpsum amount will be paid before 30th September, 1993 and 25% of lumpsum amount will be paid before 12th November,

1993 and thus the instalments have been provided for. So the dispute is in respect of non payment of lumpsum amount by the employer.

3. Before we consider the above referred dispute and eligibility or entitlement of the appellants to claim said benefits it is appropriate to point out the history of the litigation. Sometime in the year 1989 the demands were made by the union as against the respondent. However, the matter could not be settled in conciliation and, therefore, on failure of such conciliation the reference under section 10(1)(b) read with section 5 of section 12 of the Industrial Disputes Act was made to the Labour Court by the order dated 2nd July, 1990. As a result of which the reference was numbered as reference no.7 of 1990. The award in the said reference was passed by the Industrial Tribunal and was published in the Government of Maharashtra gazzette on 12th May, 1992. The said award was to remain into force upto 1.7.1994. It appears that the said award was made prospective in application and, therefore, the appellants were not satisfied and for claiming benefit of the said award retrospectively writ petition no.4039 of 1994 was filed. While the said writ petition was

pending the settlement dated 14.8.1993 referred to above has taken place. It also appears that the second charter of demands was given by the appellants and since the reference was not made writ petition no.2762 of 1995 was filed by the appellants. Simultaneously, the appellants have filed complaint (ULP) No.57/1995 for non implementation of the settlement dated 14.8.1993. However, the said complaint was dismissed by the Industrial Court on 24.6.1996 with further directions that settlement shall be implemented from 1.7.1994 provided the appellants withdraw writ petition no.2762 of 1995. That order of the Industrial Court was challenged by filing writ petition no.4795 of 1996. However, ultimately the appellants have withdrawn writ petition no.2762 of 1995 and writ petition no.4795 of 1996 was rejected by this Court and thereby the order passed in complaint (ULP) No.57 of 1995 has attained finality for implementation purpose. Since it was not implemented the appellants have filed Contempt petition no.257 of 1997 and have also filed application no.393 of 1997 in which the liberty was given for filing application under section 48 and section 50 of the M.R.T.U. and P.U.L.P. Act before the Industrial Court and, therefore, the

appellants have filed Miscellaneous Application No.8 of 1998 under section 48 and application no.14 of 1998 under section 50 of the MRTU & PULP Act before the Industrial Court. These applications were rejected. As against this order, writ petition no.5258 of 1999 was filed which was rejected by the impugned order dated 28th September, 1999. Mrs.Neeta Karnik, learned counsel for the appellants submitted that the Single Judge has committed error in rejecting the writ petition because according to the learned counsel the settlement that was executed on 14.8.1993 was enforceable from 1.7.1994 as directed by the Industrial Court in complaint (ULP) No.57/1995 and, therefore, all benefits and most specifically benefits of leave travel concession and lumpsum payment shall have been extended in favour of the appellants. The learned counsel appearing for the company submitted that from 1.7.1994 the benefit which was due and payable from that date onwards have been paid, however, the earlier benefits cannot be paid because at that time the settlement was not accepted and all dates which have been provided in the settlement have elapsed and to implement those clauses which are already executed amounts to novation of settlement which was not

intended by the orders of the Industrial Court. We have gone through the terms and conditions. There is no dispute that leave travel concession has been extended as per clause 3.6 from 1.7.1994, therefore, the question is whether the appellants are entitled for benefit of leave travel concession prior to 1.7.1994 on the basis of settlement dated 14.8.1993. It is pertinent to note equally clause 4 which provides that the lumpsum payment will be made on satisfaction of the fact that the employee is on roll on 1.1.1990, he is also on the roll on the date of signing of the agreement and that he accepts the settlement. Therefore, what we find is that the day on which the said settlement was signed, the award of the Industrial Tribunal was in force which was passed in reference No.7 of 1990 and, therefore, while the said award was in force certain benefits are required to be modified as per settlement and the consent of the parties was very much necessary. The said consent was not extended by the present appellants till they approached to the Industrial Court by filing complaint (ULP) No.57/1995 and, therefore, the said settlement was not binding as per provisions of section 18(1) of the Industrial Disputes Act in between the appellants and the respondents and it has become

binding after 1.7.1994 and/or from the date when they approached to the Industrial Court by filing complaint (ULP) No.57 of 1995 and from that day onwards the benefit has been extended. We find a force in the submission of the respondents that the day on which the consent was given the clause in respect of lumpsum payment was already executed one and the dates provided in the said clause for lumpsum payment is already acted upon and, therefore, subsequent date cannot be fixed since that part of the agreement was executed one and that was not open for subsequent period and, therefore, not extended. The same is approach in respect of leave travel concession. We find that the employer in the facts and circumstances of the case was justified in not extending the benefits claimed. It is lapse on the part of the employee in not accepting the settlement within stipulated period and in the facts and circumstances of the present case the employee-appellants, who have accepted this settlement on or before 31st August, 1997 so as to claim benefits of the lumpsum payment and leave travel concession as they are claiming before this Court we find that the single Judge and the Industrial Court was justified in rejecting the benefits to them by rejecting the application filed

under sections 48 and 50 of the M.R.T.U. & P.U.L.P. Act. In the result, we find that there is no substance in the letters patent appeal. The letters patent appeal is hereby rejected.

(D.B.Bhosale, J.) **(S.B.MHASE, J.)**

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